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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,002	04/14/2004	Robert J. Beletsky	01-0941-602CIP	7288

7590 06/11/2007
John E. Wagner, Esq.
LAW OFFICES OF JOHN E. WAGNER
3541 Ocean View Boulevard
Glendale, CA 91208

EXAMINER

MORGAN JR, JACK HOSMER

ART UNIT	PAPER NUMBER
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3782

MAIL DATE	DELIVERY MODE
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06/11/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/825,002

Applicant(s)

BELETSKY ET AL.

Examiner

Jack H. Morgan

Art Unit

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>4/19/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 15 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 15 recites the limitation "for engagement by a wearer's middle finger or ring finger, but not the wearer's trigger finger". As the human body is not patentable, this is taken as intended use, and as such it is unclear to examiner how one would prevent a user's trigger finger from activating the device claimed by applicant, if that device is capable of being activated by two other fingers of the user. As such, the metes and bounds of this claim are not distinctly claimed, rendering it and its dependent claim indefinite.

2. Claims 1-12 and 15-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 7 and 15 recite the limitation "moving of said finger engaging end in a path that cannot pass over or through said trigger guard or into engagement with said trigger". While the term "through" is easily understood as it pertains to a trigger guard, the term "pass over" renders this claim limitation indefinite as the claim does not give

any guidance to what a path which "passes over" a trigger guard would look like, and without a frame of reference, one of ordinary skill in the art would be unable to determine the metes and bounds of the claims.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1, 7, 9, 15 and 16 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 3 and 5 of U.S. Patent No. 6,769,582. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1, 7, 9, 15 and 16 lack additional structural limitations to define themselves over the previously patented claims. They describe the finger-engaging end as being spaced away from the wearer's trigger finger,

or being used by the wearer's middle finger, however, as no additional structure is introduced, the wearer may choose to not hold his trigger finger there or to use the finger-engaging end of Patent 6,769,582 with his middle finger.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 4, 7-12 15 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Corrison (US 1,635,984). Corrison discloses a revolver holster (Fig 1 and 2) with a pouch (7) having inside and outside panels (folded around gun), a housing (9) secured to the pouch by a fastener (10) having a slot (11) and a fixed stop (12), a pivotable second-class lever (16) having a finger engaging end (23) (spaced a distance away from the wearer's trigger finger) and a blocking projection (18) to capture the trigger guard of the handgun and a resilient device (21) positioned within the housing (9) for urging the blocking projection into a space within said trigger guard. The path of the finger engaging end (an arc in the lower left quadrant of a circle with a center at the pivot point) does not pass through or over the trigger guard or engage with the trigger, to the extent to which this has been defined by applicant's claims. In regards to claim 7, the end of the lever that engages the trigger guard is essentially inaccessible to the

wearer's trigger finger, as it is inside the housing, preventing accidental discharge of the firearm.

In regards to claim 2, a fulcrum device (15) is secured to the housing on one side of the slot (the bottom side) and the lever (16) is secured to the housing by the fulcrum.

In regards to claims 10, 11 and 12, the inside and outside guides of the housing comprise the two sides (on either side of 2-2) of the housing with the inside guide being a curved guide (13) and the outside guide extending outwardly (14). Both inside and outside guides cooperate to attach the lever (at 15) and to constitute a stop (12). In addition, the two guides cooperate to define between them a slot to receive the handgun's trigger guard.

In regards to claim 15, the outside guide (14) cooperates with the housing (13) to define a slot, the housing having a pivotable lever (16). The finger-engaging end of the lever is positioned so as to be engagable by the wearer's middle finger, and capable of being not engaged by the wearer's trigger finger, to the extent the applicant's claim defines structure pertaining to this limitation.

In regards to claim 16, the finger-engaging end of the lever is substantially inaccessible to the wearer's trigger finger, as the wearer's hand, resting on the butt of the revolver, would have to twist merely to allow engagement with a middle finger, depending on hand size of the wearer.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Corrison (US 1,635,984). Corrison discloses all the limitations of the claims except for a first-class lever and a resilient device on one side of the slot that contacts the lever on the same side of the fulcrum as the blocking portion. It would have been obvious to one having ordinary skill in the art at the time the invention was made to move the leaf spring (21) to the opposite side of the holder (9) so it would contact the lever (16) near the blocking portion (18), since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70. Also, the lever would work equally well in either configuration, as based on figure 1, the moment arm would remain the same, causing the same force to be applied.

In regards to claim 5, the resulting configuration places the resilient device on the right side (in Fig 1) of the slot, and the resilient device and blocking projection are on the same side of the fulcrum.

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Corrison (US 1,635,984) in view of Carver (US 5,509,591). Corrison discloses all the limitations

of the claims except for a fulcrum device secured to the housing at the end of said lever, with said resilient device and blocking projection positioned between the fulcrum device and said finger engageable end. Carver discloses a handgun holster (Fig 10 and 11) with a lever (144), a resilient device (160), a fulcrum (150) and a blocking projection (156) that engages the handgun trigger guard (136) in order to prevent the forced removal of the gun from falling out of the holster (Abstract). The lever of Carver has the fulcrum at one end, and the finger engaging end at the opposite end, with the resilient device and blocking projection in between. When replacing the lever of Corrison with the lever of Carver, the housing of Corrison is not changed, as that is what maintains the position of the gun's handle so it can be easily grasped. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to create the holster of Corrison with the lever of Carver in order to prevent the forced removal of the gun from the holster.

7. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Corrison (US 1,635,984) in view of Vor Keller et al. (US 6,230,946). Corrison discloses all the limitations of the claims except for a pair of spaced slots through the body member to define a path for the wearer's supporting belt. Vor Keller et al. disclose a gun holster with a method for trigger guard retention that additionally has a pair of slots to support the holster on a wearer's belt (Col 9, lines 33-36). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made

to create the holster of Corrison with the slots of Vor Keller et al. in order to mount the holster on a belt.

In regards to the added limitation that the trigger finger of the wearer cannot engage the trigger while normally operating the finger-engaging end of the lever, the trigger is encased in the holster while the lever is being used, and as such, the trigger cannot be engaged.

Response to Arguments

8. Applicant's arguments filed 19 April 2007 have been fully considered but they are not persuasive.

Applicant argues "In the Corrison patent, the holster wearer/user's lever-engaging finger passes upward through/over the trigger guard and over into engagement with the trigger of the handgun seated in the holster." This argument is moot as the claim language is drawn to the finger-engaging end of the lever, not to the user's finger, and furthermore, the user's finger in Corrison is unable to engage the trigger until the gun has been removed from the holster, due to the material of the holster (See Fig 2, 6).

9. Regarding the double patenting rejections of the previous office action, applicant did not argue or file a terminal disclaimer, therefore the double patenting rejection is maintained, as above.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Jovino (US 1,641,439), Swift (US 1,750,139), Glock (US 6,276,581) and Har-Shen (US 6,752,300).

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack H. Morgan whose telephone number is 571-272-3385. The examiner can normally be reached on M-Th 8-6.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jack H Morgan
Examiner
Art Unit 3782


NATHAN J. NEWHOUSE
SUPERVISORY PATENT EXAMINER